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9

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

12 FAYE IRENE GUENTHER,  
an individual,

13  
14 Plaintiff,

15 v.

16 JOSEPH H. EMMONS, individually,  
AND OSPREY FIELD CONSULTING  
17 LLC, a limited liability company,

18 Defendants.  
19  
20  
21  
22

No. 2:22-cv-00272-TOR

**DEFENDANTS'  
STATEMENT OF  
DISPUTED MATERIAL  
FACTS IN RESPONSE TO  
PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

NOTE ON MOTION  
CALENDAR: December 5,  
2024 at 9:00 a.m.

23 DEFS' STATEMENT OF DISPUTED MATERIAL FACTS  
IN RESPONSE TO PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
Case No. 2:22-cv-00272-TOR

1 Defendants Joseph H. Emmons and Osprey Field Consulting (collectively  
2 “Emmons”) submit this statement responding to Plaintiff Faye Irene Guenther’s  
3 Statement of Material Facts Not in Dispute. *See* ECF No. 105.  
4

5 1. Faye Guenther (“Guenther”) grew up in a rural Oregon Community.  
6 See Declaration of Faye I. Guenther (Guenther Decl.), ¶ 3.

7 **RESPONSE:** This purported fact has no relevance to the merits of  
8 Guenther’s claims.  
9

10 2. Guenther was sexually abused as a child and again as a teenager. See  
11 Guenther Decl. ¶ 7.

12 **RESPONSE:** These purported facts have no relevance to the merits of  
13 Guenther’s claims.  
14

15 3. Guenther witnessed a gang rape in college and testified against the  
16 perpetrator. The perpetrator was convicted. See Guenther Decl. ¶ 7.

17 **RESPONSE:** These purported facts have no relevance to the merits of  
18 Guenther’s claims.  
19

20 4. These and other experiences led Guenther to become a life-long  
21 advocate against sexual abuse and harassment. Throughout Guenther’s time at  
22 UFCW Local 21, she actively opposed sexual harassment within the union whenever  
23 she became aware of it. Her efforts led to at least four people being removed from

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FACTS IN RESPONSE TO PLAINTIFF’S MOTION FOR  
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1 the union. See Guenther Decl. ¶¶ 5-8, 18; Declaration of Joseph (Joe) Mizrahi  
2 (Mizrahi Decl.), ¶¶ 38-39.

3 **RESPONSE: DISPUTED** that Guenther is “a life-long advocate against  
4 sexual abuse and harassment” and that “she actively opposed sexual harassment  
5 within the union.” Her conduct in response to the complaints about Eric Renner’s  
6 sexual harassment illustrate that this statement is false.

7 By at least December 2, 2021, Guenther “was notified that there had been an  
8 internal dispute” at UFCW 1439 involving Renner that “had been resolved amongst  
9 all parties with nondisclosure and ... confidentiality agreements.” ECF No. 113-1 at  
10 34, 38-39 (Guenther I Tr. 71:13–18, 93:12–94:20); Declaration of John A.  
11 DiLorenzo, Jr., in Support of Defendants’ Opposition to Plaintiff’s Motion for  
12 Partial Summary Judgment (“DiLorenzo Decl.”) Ex. A (Guenther I Tr.) at 71:13–  
13 75:1. She also knew that as a result, Renner was prohibited from “directly  
14 supervis[ing] any employees.” ECF No. 113-1 at 38-39, 41, 55-56 (Guenther I Tr.  
15 93:12–94:20, 99:5–14, 167:21–168:9); ECF No. 113 ¶ 14 & ECF No. 113-13 at 2;  
16 ECF No. 113-2 at 11-12 (Guenther II Tr. 49:20–50:4); ECF No. 113-17 at 3–4.  
17 Laurel Fish testified that Guenther likely had seen the complaint letter that Fish and  
18 six other UFCW 1439 staff members wrote detailing Renner’s abusive conduct,  
19 given how broadly the letter was circulated and Guenther’s role as president-to-be  
20 of the merged union. DiLorenzo Decl. Ex. E (Fish Tr.) at 90:18–91:10. And even  
21 if Guenther did not see it, Fish directly told Guenther about Renner’s abusive  
22 conduct in December 2021. *Id.* at 87:7–88:16. Despite all of this information,

23 Guenther chose not to investigate further and continued to push the merger forward,

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1 allowing Renner to stay on with the union despite his agreement to resign. ECF  
2 No. 113-1 at 25-27, 36-37 (Guenther I Tr. 60:24–62:12, 83:6–84:6); ECF No. 113-  
3 17 at 3–4. “What was important to [her]” was “that people stayed focused on the  
4 work”—not that union staff felt comfortable and protected from sexual harassment  
5 in their workplace. DiLorenzo Decl. Ex. A (Guenther I Tr.) at 72:20–74:18.

6 On December 14, 2021, Guenther led a discussion with the UFCW 21  
7 Executive Board, in which she advocated in favor of the merger and informed the  
8 Board that Renner would continue working for the merged union. ECF No. 113-1  
9 at 26-27, 36-37 (Guenther I Tr. 61:19–62:12, 83:6–84:25); ECF No. 113-17 at 3–4.  
10 But she did not tell the UFCW 21 Executive Board about the claims against Renner,  
11 the nondisclosure agreements, Renner’s agreement to resign, or that Renner was not  
12 allowed to supervise people. ECF No. 113-1 at 25-27, 36-37 (Guenther I Tr. 60:24–  
13 62:12, 83:6–84:6); ECF No. 113-17 at 3–4.

14 On December 15 or 16, 2021, Guenther read the Flyer, which plainly states  
15 Renner had faced “sexual harassment charges.” ECF No. 113-1 at 40 (Guenther I  
16 Tr. 97:8–16). Yet, Guenther still did not look into these allegations. DiLorenzo  
17 Decl. Ex. A (Guenther I Tr.) at 98:1–99:14.

18 Guenther also admits that she later became aware of “inappropriate” text  
19 messages between Renner and a UFCW 1439 staff member, Armando Rivera,  
20 involving “sexual harassment.” DiLorenzo Decl. Ex. A (Guenther I Tr.) at 92:1–  
21 93:11. Again, she declined to speak with Renner or take any action with respect to  
22 Renner’s involvement. *Id.* at 93:7–17.

1           5. One example of her advocacy against sexual harassment occurred in  
2 September 2019, when she investigated Joe Earleywine—Local 21’s Organizing  
3 Director at the time—upon receiving reports of harassment. This investigation  
4 caused Mr. Earleywine to leave Local 21. He nonetheless secured a position with  
5 the United Food and Commercial Workers (UFCW) International Union (IU or  
6 International), where he continued to engage with Local 21 staff, making several  
7 women uncomfortable. Guenther then raised the issue with Kate Meckler, the IU  
8 Regional Director for Region 7, which covers the Pacific Northwest. Ms. Meckler  
9 did not investigate or respond to Guenther’s reports. Guenther then escalated the  
10 issue to IU President Marc Perrone, resulting in Mr. Earleywine retiring early from  
11 the IU. See Guenther Decl. ¶¶ 19-22 and Exhibit 1 thereto; Mizrahi Decl. ¶¶ 38-39.

12           **RESPONSE:** These purported facts have no relevance to the merits of  
13 Guenther’s claims. To the extent these purported facts are accurate (and the record  
14 contains no evidence other than Guenther’s self-serving declaration), the evidence  
15 shows that Guenther opposes sexual harassment only selectively. *See* Paragraph 4.

16  
17           6. In 2019, Guenther became President of UFCW Local 21. See Guenther  
18 Decl. ¶ 16.

19           **RESPONSE: Undisputed.**

20  
21           7. In 2019, Local 21 represented approximately 44,000 members,  
22 primarily in the grocery, healthcare, and cannabis industries in Seattle and greater  
23 Washington. See Guenther Decl. ¶¶ 17, 20.

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1           **RESPONSE: Undisputed.**

2  
3           8.     In 2019, Local 21 was the largest UFCW local union in the United  
4 States. Local 3000—Local 21’s successor, formed from a merger with Local 1439—  
5 is currently the largest UFCW local union in the United States. See Guenther Decl.  
6 ¶¶ 17, 86.

7           **RESPONSE: Undisputed.**

8  
9           9.     Throughout her tenure as Local 21 (and now Local 3000) President,  
10 Local 21 has achieved significant accomplishments, including increases in the  
11 minimum wage, sick leave, saving a failing pension, building new divisions within  
12 the union to better serve members, and renegotiating hundreds of contracts. See  
13 Guenther Decl. ¶ 15.

14           **RESPONSE: Undisputed.**

15  
16           10.    Local 367 is a UFCW affiliate in Tacoma and surrounding counties in  
17 western and southwestern Washington. See Guenther Decl. ¶¶ 20, 28.

18           **RESPONSE: Undisputed.**

19  
20           11.    UFCW local unions typically enjoy significant autonomy but may be  
21 put under trusteeship, in which case the International Union exercises significant  
22 control over the trustee local, including by appointing a trustee who takes over  
23 control from the local’s elected officers. See Guenther Decl. ¶ 33.

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1           **RESPONSE:** These purported facts have no relevance to Guenther's claims.

2  
3           12.     UFCW put Local 367 under trusteeship in or around January 2019. See  
4 Guenther Decl. ¶ 32.

5           **RESPONSE:** This purported fact has no relevance to the merits of  
6 Guenther's claims.

7  
8           13.     During that trusteeship, the International hired Angel Gonzalez Irayarry  
9 to work at Local 367 in a leadership position. See Guenther Decl. ¶ 34.

10          **RESPONSE: Undisputed.**

11  
12          14.     Local 367's trusteeship ended at the end of June 2020. See Guenther  
13 Decl. ¶ 35.

14          **RESPONSE: Undisputed.**

15  
16          15.     Gonzalez became President of Local 367 in or around July 2020. See  
17 Guenther Decl. ¶ 35.

18          **RESPONSE: Undisputed.**

19  
20          16.     Local 555 is a UFCW affiliate in Oregon with approximately 30,000  
21 members. See Guenther Decl. ¶¶ 20, 58.

22          **RESPONSE: Undisputed.**

1           17. Dan Clay is Local 555's President. He has held that position since  
2 August 2008. See Guenther Decl. ¶ 58.

3           **RESPONSE: Undisputed** that Dan Clay is Local 555's President and that  
4 he held that position during the relevant time period. Clay in fact became Local 555  
5 President in January 2009, but that discrepancy is not relevant to Guenther's claims.

6  
7           18. Clay is also an International Vice President (IVP) of UFCW and serves  
8 on its International Executive Board (IEB)—the International Union's governing  
9 body. He had held that position for many years. See Guenther Decl. ¶ 60.

10           **RESPONSE: Undisputed.**

11  
12           19. Guenther and Clay have known each other since 2008. For many years,  
13 they were friends and collaborators within the labor movement. See Guenther Decl.  
14 ¶¶ 59, 78.

15           **RESPONSE:** These purported facts have no relevance to the merits of  
16 Guenther's claims against Emmons.

17  
18           20. In 2019, Guenther suggested that all local unions in UFCW Regions 7  
19 and 8 should bargain together against Kroger and Albertsons. Clay opposed that  
20 approach, apparently worried that he would no longer have control over his  
21 members. See Guenther Decl. ¶ 64.

22           **RESPONSE:** These purported facts have no relevance to the merits of  
23 Guenther's claims against Emmons.

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1  
2           21. On July 19, 2021, Kate Meckler emailed Clay, Gonzalez, Eric Renner  
3 (the then-President of Local 1439 in Eastern Washington, with approximately 7,800  
4 members at the time), and other local union presidents within Regions 7 and 8  
5 regarding an upcoming meeting to discuss coordination for the 2021-2022  
6 negotiations in the retail industry. Ms. Meckler invited suggestions for the agenda.  
7 See Guenther Decl. ¶¶ 61, 86; Guenther Decl. Ex. 8 (UFCW-EMMONS 000781-  
8 784).

9           **RESPONSE:** These purported facts have no relevance to the merits of  
10 Guenther's claims against Emmons.  
11

12           22. Guenther responded on July 20, 2021, with her suggestions. See  
13 Guenther Decl. ¶ 62.

14           **RESPONSE:** This purported fact has no relevance to the merits of  
15 Guenther's claims against Emmons.  
16

17           23. Clay replied to that email, omitting Guenther and including Esai Alday  
18 (Clay's executive assistant), Gonzalez, and Meckler, saying "Shit We'd better plan  
19 for a week..." See Guenther Decl. ¶ 63; Guenther Decl. Ex. 8 (UFCW-EMMONS  
20 000781-784).

21           **RESPONSE:** These purported facts have no relevance to the merits of  
22 Guenther's claims against Emmons.  
23

1           24. On July 21, 2021, Clay responded to Meckler's July 19 email, including  
2 all original recipients, explaining that Locals 555 and 368A had agreed to a merger  
3 and Local 555 had been in discussions with Local 367 over coordinated bargaining.  
4 See Guenther Decl. ¶ 65; Guenther Decl. Ex. 9 (UFCW-EMMONS 000785-786).

5           **RESPONSE:** These purported facts have no relevance to the merits of  
6 Guenther's claims against Emmons.

7  
8           25. At the time, Local 368A was headquartered in Boise, Idaho, and  
9 represented approximately 1,100 members in Idaho, eastern Oregon, and western  
10 Wyoming. As a result of the merger, Local 555 represented approximately 25,000  
11 members. See Guenther Decl. ¶ 66.

12           **RESPONSE:** These purported facts have no relevance to the merits of  
13 Guenther's claims against Emmons.

14  
15           26. Guenther opposed coordinated bargaining between Locals 555 and 367,  
16 fearing that doing so would undercut labor standards Local 21 had achieved in  
17 Washington for its members. See Guenther Decl. ¶¶ 67-70; Guenther Decl. Ex. 10  
18 (UFCW-EMMONS 000801-804).

19           **RESPONSE:** These purported facts have no relevance to the merits of  
20 Guenther's claims against Emmons.

21  
22           27. Clay sent an email on July 28, 2021, describing Guenther's concerns as  
23 "delightfully petty." He elaborated that reading her concerns "made [his] night." See

1 Guenther Decl. ¶ 71.

2 **RESPONSE:** These purported facts have no relevance to the merits of  
3 Guenther's claims against Emmons.  
4

5 28. That day, July 28, 2021, Clay filed a formal complaint with IU  
6 President Marc Perrone, alleging that Local 21 interfered with Local 555's and 367's  
7 bargaining. His email copied Mike Hines—then Secretary Treasurer of Local 367—  
8 not its President, Gonzalez. See Guenther Decl. ¶¶ 72-74; Guenther Decl. Ex. 11  
9 (UFW-EMMONS-000004-05).

10 **RESPONSE:** These purported facts have no relevance to the merits of  
11 Guenther's claims against Emmons.  
12

13 29. Under the UFCW Constitution, a Local President, not its Secretary  
14 Treasurer, is the chief executive officer of the Local Union. Ordinarily, a Local  
15 President, not its Secretary Treasurer, would be the appropriate official to confirm  
16 whether an official complaint for violating the IU Constitution was, in fact, on behalf  
17 of the Local Union. See Guenther Decl. ¶ 75.

18 **RESPONSE:** These purported facts have no relevance to the merits of  
19 Guenther's claims against Emmons.  
20

21 30. The oddity of Clay copying Hines, not Gonzalez, on his July 28, 2021,  
22 suggests that as of July 28, 2021, Clay knew (or strongly suspected) that Gonzalez  
23 had already resigned as President of Local 367 and, for that reason, Hines was

1 authorized to speak on behalf of Local 367. See Guenther Decl. ¶ 76.

2 **RESPONSE:** These purported facts have no relevance to the merits of  
3 Guenther's claims against Emmons.  
4

5 31. Mike Hines then joined Clay's complaint. See Guenther Decl. ¶¶ 74-  
6 76; Dalmat Decl. Ex. 1 (UFCW-EMMONS 000987-990).

7 **RESPONSE:** This purported fact has no relevance to the merits of  
8 Guenther's claims against Emmons.  
9

10 32. On September 29, 2021, Guenther sent Clay an email, titled "Setting up  
11 a Conversation," in which she tried to work with Clay to mediate their dispute. See  
12 Guenther Decl. ¶ 78.

13 **RESPONSE:** This purported fact has no relevance to the merits of  
14 Guenther's claims against Emmons.  
15

16 33. Clay never responded to Guenther's September 29, 2021, offer of  
17 mediation. See Guenther Decl. ¶ 79.

18 **RESPONSE:** This purported fact has no relevance to the merits of  
19 Guenther's claims against Emmons.  
20

21 34. On October 19, 2021, IU President Perrone sent Guenther a letter  
22 directing Local 21 to cease and desist interfering with Local 555's bargaining  
23 relationships. See Guenther Decl. ¶ 80; Guenther Decl. Ex. 12 (UFCW-EMMONS

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1 000006).

2 **RESPONSE:** This purported fact has no relevance to the merits of  
3 Guenther's claims against Emmons.  
4

5 35. Guenther sought to appeal IU President Perrone's October 19, 2021,  
6 cease and desist directive, or otherwise to have him rescind it. Initially, those efforts  
7 were unsuccessful. See Guenther Decl. ¶¶ 81-84; Guenther Decl. Ex. 13 (UFCW-  
8 EMMONS 000051-53); Guenther Decl. Ex. 14 (RFP No. 15 Resp - 015153-  
9 015154).

10 **RESPONSE:** This purported fact has no relevance to the merits of  
11 Guenther's claims against Emmons.  
12

13 36. On September 30, 2021, Eric Renner called Guenther to explore the  
14 possibility of Local 1439 and 21 merging. See Guenther Decl. ¶ 85.

15 **RESPONSE: Undisputed.**  
16

17 37. Even before becoming Local 21 President, Guenther thought there may  
18 be value in a merger between Locals 21 and 1439. But she had not done anything to  
19 pursue such a merger before receiving Renner's call on September 30, 2021. That  
20 call struck Guenther as a bit out of the blue. See Guenther Decl. ¶ 87.

21 **RESPONSE: Undisputed** based on the record.  
22

23 38. During the September 30 call, Renner told Guenther he felt  
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1 overwhelmed with his responsibilities as local president because he had also been  
2 taking care of his ailing mother. He did not say anything during the call about facing  
3 allegations from his staff of sexual harassment or other misconduct. See Guenther  
4 Decl. ¶ 88.

5 **RESPONSE: DISPUTED** to the extent the statement implies that Renner  
6 was interested in a merger because “he felt overwhelmed with his responsibilities as  
7 local president.” Before September 2021, Renner was strongly opposed to a merger  
8 between UFCW 1439 and UFCW 21. *See* DiLorenzo Decl. Ex. F (Jackson Tr.) at  
9 91:8–95:10; *id.* Ex. G (Garcia Tr.) at 81:10–18. Renner first expressed interest in  
10 merging only after Streepy began investigating complaints from UFCW 1439 staff  
11 members regarding Renner’s sexual harassment, and likely after Renner understood  
12 that he would need to resign. *See infra* ¶¶ 110–114.

13  
14 39. Guenther did not say much during that call. See Guenther Decl. ¶ 89.

15 **RESPONSE: Undisputed.**

16  
17 40. In the next few weeks after September 30, 2021, Guenther called  
18 Renner to let him know she was open to exploring a Local 21/1439 merger. Then,  
19 or shortly thereafter, they set up a meeting for October 27, 2021. See Guenther Decl.  
20 ¶ 90.

21 **RESPONSE: Undisputed** that Guenther called Renner to let him know that  
22 she was interested in a merger between Local 21 and Local 1439, and that Guenther  
23 set up a meeting with Renner for October 27, 2021. **DISPUTED** to the extent this

1 statement implies that this call occurred later than September 30, 2021, or that there  
2 were no other communications regarding the merger between September 30 and  
3 October 27, 2021. ECF No. 113 ¶ 13 & No. 113-12 at 30–33; ECF No. 113-2 at 3-  
4 4 (Guenther II Tr. 30:16–31:7).

5  
6 41. To prepare for that meeting, on October 21, 2021, Guenther sent Renner  
7 a sample merger agreement Local 21 had used when it previously explored a merger  
8 with Local 367. (That merger with Local 367 did not come to pass.) See Guenther  
9 Decl. ¶ 91.

10 **RESPONSE: Undisputed.**

11  
12 42. On October 28, 2021, Guenther and Renner hand delivered to Meckler  
13 a letter addressed to IU President Perrone requesting formal approval by the  
14 International Executive Committee for Locals 21 and 1439 to engage in formal  
15 merger discussions. Meckler had previously allied with Clay and others against  
16 Guenther on various matters. Record: Guenther Decl. ¶¶ 20-22, 27, 30-31, 63-65,  
17 71, 92; Guenther Decl. Ex. 15 [Guenther Dep. Ex. 8]; Dalmat Decl. Ex. 2 (UFCW-  
18 EMMONS 000899-901).

19 **RESPONSE: Undisputed** that on October 28, 2021, Guenther hand  
20 delivered to Kate Meckler a letter addressed to UFCW International President Marc  
21 Perrone requesting approval for Locals 21 and 1439 to engage in formal merger  
22 discussions, and that Guenther believed Meckler may oppose the merger. The  
23 remaining purported facts in this paragraph are irrelevant to Guenther's claims.

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1  
2 43. Under the UFCW Constitution, the International Executive Committee  
3 must approve formal merger discussions before they begin. See Guenther Decl. ¶  
4 92.

5 **RESPONSE: Undisputed.**

6  
7 44. The October 28, 2021, letter explained Guenther's and Renner's view  
8 that the merger was in the best interests of the membership. See Guenther Decl. ¶¶  
9 92-93; Guenther Decl. Ex. 15 (Guenther Dep. Ex. 8).

10 **RESPONSE: Undisputed** that the letter provided reasons the merger was  
11 supposedly in the best interests of the Local 21 and Local 1439 membership.  
12 **DISPUTED** that Renner believed the merger was in the best interests of Local  
13 1439's membership. Before September 2021, Renner had repeatedly stated to his  
14 staff that he was opposed to a merger with UFCW 21. *See* DiLorenzo Decl. Ex. F  
15 (Jackson Tr.) at 91:8–95:10; *id.* Ex. G (Garcia Tr.) at 81:10–18.

16  
17 45. Guenther later called President Perrone to request a face-to-face  
18 meeting to discuss the merger. That meeting occurred, with only President Perrone,  
19 his executive assistant Lori Werner, and Guenther in attendance. See Guenther Decl.  
20 ¶ 94.

21 **RESPONSE: Undisputed.**

22  
23 46. At the meeting, President Perrone pledged his verbal support for the  
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1 merger. Meckler nonetheless held the formal approval until after a union-election  
2 vote at a Fred Meyer store in Richland, Washington, late in November. See Guenther  
3 Decl. ¶ 94.

4 **RESPONSE: Undisputed.**

5  
6 47. Even though formally merger discussions had not yet been approved  
7 and were not public, on November 13, 2021, Clay emailed President Perrone  
8 detailing his opposition to a Local 21/1439 merger. See Dalmat Decl. Ex. 3 (UFCW-  
9 EMMONS 000923-924).

10 **RESPONSE:** These purported facts have no relevance to the merits of  
11 Guenther's claims against Emmons.  
12

13 48. Clay's email alleged that the merger would cover up and protect sexual  
14 harassers and would "negatively impact Local 555 members," including by  
15 escalating jurisdictional tensions between the Oregon and Washington-based locals,  
16 giving the Washington-based local control over Local 555's retirement plans, and  
17 putting Guenther in a position to have more influence in the Pacific Northwest. See  
18 Dalmat Decl. Ex. 3 (UFCW-EMMONS 000923-924).

19 **RESPONSE:** These purported facts have no relevance to the merits of  
20 Guenther's claims against Emmons.  
21

22 49. On December 2, 2021, President Perrone sent Guenther a letter  
23 officially granting permission for Locals 21 and 1439 to enter into formal merger

1 discussions. See Guenther Decl. ¶ 95; Guenther Decl. Ex. 16 (Guenther Dep. Ex. 9).

2 **RESPONSE: Undisputed.**

3  
4 50. Over the next couple weeks, principally from December 9 through 13,  
5 2021, Guenther and Renner began discussing the prospect of a merger with key staff  
6 at Local 21 and Local 1439. Those discussions were limited to approximately six  
7 high-level staff of the two local unions. No public outreach occurred at this time.  
8 See Guenther Decl. ¶ 96.

9 **RESPONSE: Undisputed** that Guenther and Renner discussed their  
10 proposed merger with key staff at UFCW 21 and UFCW 1439 between December 9  
11 and 13, 2021, and that the unions had not publicly announced the merger at that time.  
12

13 51. On December 14, 2021, Locals 21 and 1439 held meetings of their  
14 respective Boards. The Local 21 Board had approximately 36 rank-and-file  
15 members, and the Local 1439 Board had approximately 12 members. The Boards  
16 discussed the merger during executive sessions, which are reserved for sensitive,  
17 private discussions. Each Board recommended putting the merger question to a vote  
18 of their respective members. See Guenther Decl. ¶¶ 97-101; Guenther Decl. Ex. 17  
19 (RFP Resp No 6—006001-03).

20 **RESPONSE: Undisputed** that the UFCW 21 Executive Board and the  
21 UFCW 1439 Executive Board held meetings on December 14, 2021, in which they  
22 discussed the merger and voted to recommend the merger to members, who would  
23 then vote on it. *See* ECF No. 113-17 at 2–3 (noting “discussion ... lead [*sic*] by Faye

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1 Guenther on recommendation of merging with UFCW Local 1439” that resulted in  
2 board “recommend[ing] its approval to the UFCW 21 membership”).

3  
4 52. Under the terms of the UFCW Constitution, two local unions may  
5 merge only if each local union membership separately approves the merger by a  
6 majority of that local’s members casting votes. See Guenther Decl. ¶ 102.

7 **RESPONSE: Undisputed.**

8  
9 53. By letter dated January 6, 2022, Local 21 provided notice to its  
10 membership of the upcoming merger vote. The notice identified the dates, times, and  
11 places of the meetings where members could vote and provided basic information  
12 about the process. It did not, however, ask any member to vote in favor of the merger.  
13 See Guenther Decl. ¶ 103; Guenther Decl. Ex. 18 (2022 Winter GMM Mailer).

14 **RESPONSE: Undisputed** that on January 6, 2022, the notice at Guenther  
15 Decl. Ex. 18 was sent to UFCW 21 members. **DISPUTED** to the extent the  
16 statement implies this was UFCW 21’s first or only communication with members  
17 regarding the merger. For example, UFCW 21 announced the merger on December  
18 17, 2021, on its website and urged members to vote in favor of it. *See infra* ¶ 61  
19 (citing ECF No. 10-19; [https://ufcw3000.org/news/2021/12/17/building-our-power-](https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-ufcw-local-in-the-nation)  
20 [as-the-largest-ufcw-local-in-the-nation](https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-ufcw-local-in-the-nation) (last accessed October 25, 2024)).<sup>1</sup>

21  
22 <sup>1</sup> See Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment  
23 at 5 n.1 (requesting judicial notice of this document).

1  
2 54. From January 6-20, 2022, Local 1439 held meetings during which  
3 members voted on the merger. See Dalmat Decl. Ex. 4 (Guenther Tr. 172:1-174:12).

4 **RESPONSE: Undisputed.**  
5

6 55. Local 1439 did not, however, conduct a public campaign on the merger.  
7 See Dalmat Decl. Ex. 5 (Jackson Tr. 135:21-137:17); Crosby Decl. ¶ 14.

8 **RESPONSE: DISPUTED.** UFCW 1439 announced the merger vote to  
9 members on December 17, 2021. ECF No. 113-24 at 2 At the meetings where  
10 members voted on the merger, UFCW 1439—with Guenther’s help—informed  
11 members that UFCW 1439’s Executive Board recommended the merger and thereby  
12 encouraged members to vote in favor of it. ECF No. 113-18 at 2. Guenther and  
13 Renner also communicated with key individuals to get their support for the merger.  
14 ECF No. 113-12 at 18, 23, 26, 29–33.  
15

16 56. Only 196 out of approximately 7,800 members of Local 1439 voted on  
17 the merger. See Dalmat Decl. Ex. 6 (UFCW-EMMONS 000162-167).

18 **RESPONSE: Undisputed.**  
19

20 57. Local 1439 members approved the merger by a vote of 191 to 5. See  
21 Dalmat Decl. Ex. 6 (UFCW-EMMONS 000162-167).

22 **RESPONSE: Undisputed.**  
23

1           58. From February 9-12, 2022, Local 21 held meetings where members  
2 voted on the merger. See Guenther Decl. ¶¶ 104-105; Guenther Decl. Ex. 19  
3 (UFCW-EMMONS 000152).

4           **RESPONSE: Undisputed.**  
5

6           59. Only 218 out of approximately 44,000 members of Local 21 voted on  
7 the merger. See Guenther Decl. ¶ 106; Guenther Decl. Ex. 19 (UFCW-EMMONS  
8 000152).

9           **RESPONSE: Undisputed.**  
10

11           60. Local 21 members approved the merger by a vote of 207 to 11.  
12 Guenther Decl. ¶ 106; Guenther Decl. Ex. 19 (UFCW-EMMONS 000152);  
13 Guenther Decl. Ex. 20 (RFP Resp. No. 6—006604).

14           **RESPONSE: Undisputed.**  
15

16           61. Apart from the formal January 6, 2022, notice of the upcoming merger  
17 votes, neither Local 21 nor Guenther engaged in any public communications with  
18 Local 21 members on the merger in an effort to persuade them how to vote on the  
19 matter. That approach is consistent with Local 21's member-led model, in which the  
20 members—not their elected officials—are featured in union publications. See  
21 Guenther Decl. ¶¶ 107-112; Mizrahi Decl. ¶¶ 32-34; Crosby Decl. ¶ 14.

22           **RESPONSE: DISPUTED.** On December 17, 2021, UFCW 21 issued a press  
23 release on its website, titled "Building our power as the largest UFCW Local in the  
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1 nation,” that encouraged members to vote in favor of the merger. ECF No. 10-19;  
 2 *see also* [https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-](https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-ufcw-local-in-the-nation)  
 3 [ufcw-local-in-the-nation](https://ufcw3000.org/news/2021/12/17/building-our-power-as-the-largest-ufcw-local-in-the-nation) (last accessed October 25, 2024).<sup>2</sup> The first line of the  
 4 announcement states in bold: “**On Tuesday, December 14, our member-led**  
 5 **executive board discussed and unanimously approved a Merger Agreement**  
 6 **between our Union, UFCW 21 and the members of UFCW 1439!**” *Id.* The  
 7 announcement further states that “both boards feel strongly that together we will  
 8 increase our ability to continue the fight for improved wages, working conditions  
 9 and benefits as well as improve our staffing, schedules and workplace safety.” *Id.*  
 10 And the announcement specifically told members they should approve the merger:  
 11 “Members will have the opportunity to vote *to approve this powerful merger* during  
 12 our upcoming in-person Winter General Membership Meetings in February 2022.”  
 13 *Id.* (emphasis added).

14  
 15 62. Merger votes among UFCW local unions typically are low-turnout  
 16 affairs that do not generate public debate. See Crosby Decl. ¶¶ 7-14.

17 **RESPONSE: DISPUTED** that UFCW local union Boards, staff, and  
 18 members do not debate the merits of mergers. ECF No. 113-17 at 3–4; ECF No. 106  
 19 at 87–88; ECF No. 113-12 at 18, 23, 26, 29–33; ECF No. 113-18 at 2. **Undisputed**  
 20 that in recent years, a low percentage of UFCW members have voted on mergers

21 \_\_\_\_\_  
 22 <sup>2</sup> *See* Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment  
 23 at 5 n.1 (requesting judicial notice of this document).

1 involving UFCW 21. However, the cited testimony does not support the broad  
2 assertion that all “[m]erger votes among UFCW local unions typically are low-  
3 turnout affairs that do not generate public debate.”  
4

5 63. At Clay’s direction and consistent with Clay’s November 13, 2021,  
6 email, on December 13, 2021, Mike Selvaggio—Local 555’s contracted political  
7 director (who owns and operates Ridgelark Strategies)—mailed approximately  
8 1,000 flyers to shop stewards at selected stores throughout Washington where  
9 UFCW members worked. A Local 367 member posted the flyer in a Facebook group  
10 closed to Local 367 members, garnering merely 26 comments and 17 reactions. See  
11 Dalmat Decl. Ex. 7 (Selvaggio Tr. 108:18-113:9, 133:20-134:12, 134:18-135:23);  
12 Dalmat Decl. Ex. 8 (Selvaggio Ex. 4); Dalmat Decl. Ex. 9 (Hines sub resp. 030);  
13 Dalmat Decl. Ex. 10 (RFP Resp. No. 2—002095); Dalmat Decl. Ex. 11 (RFP Resp  
14 No. 2—002099-2100); Dalmat Decl. Ex. 4 (Guenther Tr. 99:22-100:18).

15 **RESPONSE: Undisputed.**  
16

17 64. Selvaggio created the flyer based on talking points he had discussed  
18 with Clay and Esai Alday, Clay’s executive assistant. See Dalmat Decl. Ex. 7  
19 (Selvaggio Tr. 113:10-114:3, 122:17-124:12, 144:3-145:1).

20 **RESPONSE: Undisputed.**  
21

22 65. Selvaggio has since destroyed his notes of that discussion. See Dalmat  
23 Decl. Ex. 7 (Selvaggio Tr. 122:21-123:2).

1           **RESPONSE: Undisputed.** This fact has no relevance to the merits of  
2           Guenther's claims against Emmons because Emmons had no knowledge of it.  
3

4           66. At Clay's direction, to avoid identifying the mailer's source, Selvaggio  
5           intentionally provided no return address and mailed the flyers from Spokane to  
6           further conceal their origins. See Dalmat Decl. Ex. 7 (Selvaggio Tr. 97:17-98:10,  
7           113:10-114:3, 144:3-145:1).

8           **RESPONSE: Undisputed.**  
9

10          67. A week after that mailing, on December 21, 2021, an email from a fake  
11          address, repeating the accusations from the flyer Clay and Selvaggio prepared, was  
12          sent to several UFCW International Vice Presidents (IVPs). See Dalmat Decl. Ex.  
13          12 (UFCW-EMMONS 000925).

14          **RESPONSE: Undisputed** that on December 21, 2021, an email was sent  
15          from collinfarthingworth@gmail.com to several UFCW International Vice  
16          Presidents. **DISPUTED** that collinfarthingworth@gmail.com was a "fake" email  
17          address, as Guenther cites no evidence concerning who sent the email, much less its  
18          authenticity.  
19

20          68. Clay, who likely authored the email, forwarded it to Meckler. See  
21          Dalmat Decl. Ex. 12 (UFCW-EMMONS 000925).

22          **RESPONSE: Undisputed** that Clay forwarded the email cited in Paragraph  
23          67 to Meckler. **DISPUTED** that Clay authored the email, as that is pure conjecture



1 and Guenther has no evidence to support it.

2  
3 69. When the mailing and email did not get the traction Clay and Selvaggio  
4 sought, they escalated their smear campaign—now dubbed Project Wagon Wheel—  
5 by leaving the flyers in-person at targeted stores in Spokane where UFCW members  
6 were likely to see them. See Dalmat Decl. Ex. 7 (Selvaggio Tr. 106:3-107:12).

7 **RESPONSE: Undisputed** that Selvaggio decided to leave copies of the Flyer  
8 at grocery stores in Spokane where UFCW members were likely to see them.  
9 **Undisputed** that the name “Project Wagon Wheel” was used to reference their effort  
10 to inform UFCW members in Spokane of the misconduct described in the Flyer.  
11 **DISPUTED** that distributing the Flyer was part of a “smear campaign,” rather than  
12 an effort to inform UFCW members of the misconduct the Flyer described.  
13 DiLorenzo Decl. Ex. C (Selvaggio Tr.) at 99:11–100:5, 109:5–112:9. **DISPUTED**  
14 that Clay or Selvaggio had any connection to the email referenced in Paragraph 67,  
15 as Guenther has no evidence that Clay was involved, and Selvaggio testified he was  
16 not familiar with it. *Id.* at 11:15–22.

17  
18 70. Selvaggio called Joseph Emmons on or around January 5, 2022, to ask  
19 him to carry out that in-person distribution. See Dalmat Decl. Ex. 7 (Selvaggio Tr.  
20 108:18-110:4).

21 **RESPONSE: Undisputed** that Selvaggio called Emmons in early January  
22 and asked to hire him through Emmons’s company Osprey Field Services LLC to  
23 distribute the Flyer by leaving copies at grocery stores in Spokane. **DISPUTED** to

1 the extent the statement implies Emmons had any knowledge of Clay's involvement  
2 or a so-called "smear campaign." Selvaggio did not tell Emmons that Clay was  
3 behind the Flyer, and to Emmons's knowledge, he was distributing the Flyer to  
4 provide UFCW members truthful information. Declaration of Joseph H. Emmons,  
5 concurrently filed, ("Emmons Decl.") ¶¶ 7-8.

6  
7 71. During that conversation, Selvaggio explained to Emmons that the  
8 purpose was to distribute flyers against a potential merger and "push information out  
9 to UFCW members regarding the allegations that were contained in the flyers." See  
10 Dalmat Decl. Ex. 7 (Selvaggio Tr. 109:23-110:4, 117:8-23); Dalmat Decl. Ex. 13  
11 (Emmons Tr. 69:17-70:14).

12 **RESPONSE: Undisputed** that Selvaggio explained to Emmons that he  
13 wanted Emmons to distribute the Flyer and the information in it, and that the Flyer  
14 advocated against the proposed merger. **DISPUTED** that this discussion occurred  
15 in the first phone call regarding the Flyer, as Emmons does not recall whether this  
16 discussion occurred in his first or second conversation with Selvaggio about the  
17 project. Emmons Decl. ¶ 7. **DISPUTED** to the extent the statement implies  
18 Selvaggio asked Emmons to do anything other than passively place the Flyer in  
19 grocery stores. ECF No. 106 at 76 (Selvaggio Tr. 144:3-15) ("Mr. Emmons  
20 distributing the flyers was to be passive – he was to be passive").

21  
22 72. Selvaggio also explained to Emmons that the flyers involved  
23 accusations that leaders who had previously faced sexual harassment allegations

1 were attempting to come back into leadership. See Dalmat Decl. Ex. 7 (Selvaggio  
2 Tr. 110:9-111:13); Dalmat Decl. Ex. 13 (Emmons Tr. 69:7-14).

3 **RESPONSE: Undisputed.**

4  
5 73. During that initial conversation, Emmons immediately recognized the  
6 incendiary nature of those accusations and asked Selvaggio for their basis. See  
7 Dalmat Decl. Ex. 13 (Emmons Tr. 69:7-10,70:20-71:22).

8 **RESPONSE: DISPUTED** to the extent the statement implies Emmons ever  
9 doubted the truth of the Flyer's statements. *See* ECF No. 112 ¶¶ 5–9; ECF No. 113-  
10 4 at 8, 10–11. Emmons has repeatedly testified that he knew Selvaggio to be honest  
11 and trustworthy and that he believed the Flyer was true. *See* ECF No. 112 ¶¶ 5–9;  
12 ECF No. 113-4 at 8, 10–11. **Undisputed** that Emmons asked Selvaggio to confirm  
13 the Flyer's statements were accurate. ECF No. 112 ¶ 9. **DISPUTED** that this  
14 discussion occurred in the first phone call regarding the Flyer, as Emmons does not  
15 recall whether this discussion occurred in his first or second conversation with  
16 Selvaggio about the project. Emmons Decl. ¶ 7.

17  
18 74. Selvaggio told him the sexual harassment allegations were supported  
19 by investigations and social media posts. See Dalmat Decl. Ex. 13 (Emmons Tr.  
20 70:20-71:22); Dalmat Decl. Ex. 7 (Selvaggio Tr. 110:24-111:16).

21 **RESPONSE: Undisputed** that Selvaggio told Emmons that the Flyer's  
22 statements were supported by investigations and that UFCW members had posted  
23 on social media about it.

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1  
2       75.     Selvaggio, in turn, relied on the representations of Clay and Alday, who  
3 had told him that they relied on an investigation by the International—an assertion  
4 Selvaggio did nothing to verify. See Dalmat Decl. Ex. 7 (Selvaggio. Tr. 111:23-  
5 112:19).

6       **RESPONSE:** These purported facts have no relevance to the merits of  
7 Guenther’s claims against Emmons.  
8

9       76.     In fact, the International repeatedly deemed the flyers’ accusations to  
10 be false. See Dalmat Decl. Ex. 14 (UFCW-EMMONS 000029 —32), Dalmat Decl.  
11 Ex. 15 (UFCW-EMMONS 000936), Dalmat Decl. Ex. 16 (UFCW-EMMONS  
12 000937).

13       **RESPONSE: Undisputed** that Dalmat Decl. Ex. 14 is an August 15, 2022  
14 electronic letter from Perrone stating the “handbill is false.” ECF No. 106 at 122.  
15 Dalmat Decl. Ex. 15 is a cease-and-desist email from Perrone to Clay, sent  
16 November 3, 2023. ECF No. 106 at 126. Dalmat Decl. Ex. 16 is a November 3,  
17 2023 email with the subject “Notice to the UFCW International Executive Board.”  
18 ECF No. 106 at 128. **DISPUTED** to the extent the statement implies UFCW  
19 International investigated the Flyer’s statements. The August 15 letter from Perrone  
20 states that he cannot fully address “claims related to the disparagement in the  
21 handbill” in part because he was “hindered in investigating the facts at issue.” ECF  
22 No. 106 at 123 (concluding the union’s “internal remedies cannot substitute for civil  
23 litigation in these circumstances”).

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1  
2 77. Selvaggio and Emmons did not discuss any payoffs or whether  
3 Guenther was involved in any way in those allegations or the target of any sexual  
4 harassment investigation. See Dalmat Decl. Ex. 7 (Selvaggio Tr. 111:14-112:19);  
5 Dalmat Decl. Ex. 13 (Emmons Tr. 71:20-25,78:2-7,78:22-79:8,80:3-12).

6 **RESPONSE: Undisputed** that Selvaggio and Emmons did not discuss  
7 details about the Flyer's statements apart from the fact that the statements were true  
8 and supported by investigations. ECF No. 113-3 at 19–20; ECF No. 113-4 at 8, 10–  
9 11; ECF No. 112 ¶¶ 5–9. **DISPUTED** to the extent the statement implies Selvaggio  
10 and Emmons did not discuss the Flyer's statements at all. Selvaggio and Emmons  
11 read through each of the Flyer's statements—including that Guenther had paid off  
12 Gonzalez and that Guenther was helping Renner hide from sexual harassment  
13 claims—and Selvaggio confirmed to Emmons that they were true. ECF No. 113-3  
14 at 19–20; ECF No. 113-4 at 8, 10–11; ECF No. 112 ¶¶ 5–9.

15  
16 78. As far as Emmons recalls, they did not discuss Guenther at all during  
17 that conversation. See Dalmat Decl. Ex. 13 (Emmons Tr. 64:21-65:15).

18 **RESPONSE: DISPUTED** to the extent the statement asserts Selvaggio and  
19 Emmons did not discuss the Flyer's statements about Guenther at all. Selvaggio and  
20 Emmons read through the Flyer, and Selvaggio confirmed to Emmons that each  
21 statement was true. See ECF No. 113-3 at 19–20; ECF No. 113-4 at 8, 10–11; ECF  
22 No. 112 ¶¶ 5–9; DiLorenzo Decl. Ex. D (Emmons Tr.) at 67:3–5 (correcting  
23 statement at 65:8–11). **Undisputed** that Selvaggio and Emmons did not discuss

1 further details about Guenther.

2  
3 79. Emmons did not discuss the flyer's accusations with anyone else. See  
4 Dalmat Decl. Ex. 13 (Emmons Tr. 73:8-23).

5 **RESPONSE: Undisputed.**

6  
7 80. After the conversation, Selvaggio emailed Emmons the flyer. See  
8 Dalmat Decl. Ex. 17 (Selvaggio Ex. 8); Dalmat Decl. Ex. 7 (Selvaggio Tr. 139:9-  
9 140:1, 144:3-145:1).

10 **RESPONSE: Undisputed.**

11  
12 81. It was apparent to Emmons from the flyer that Guenther was the  
13 President of a UFCW local union but he had no idea whether the accusations against  
14 Guenther were true. See Dalmat Decl. Ex. 13 (Emmons Tr. 69:17-70:10, 74:11-13,  
15 78:25-79:8, 90:24-92:16).

16 **RESPONSE: Undisputed** that Emmons learned from the Flyer that  
17 Guenther was President of UFCW 21. **DISPUTED** that Emmons "had no idea  
18 whether the accusations against Guenther were true." Emmons has repeatedly  
19 testified that he believed the Flyer's statements were true. ECF No. 112 ¶¶ 5-9; ECF  
20 No. 113-4 at 10-11 (Emmons Tr. 108:23-109:10). Emmons had known Selvaggio  
21 for nearly a decade, having worked for him on numerous projects over the years, and  
22 knew him to be an honest and trustworthy person, who was "selective in the  
23 organizations and people he [chose] to work for and only work[ed] for those with

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high integrity.” ECF No. 112 ¶ 6. After reading the Flyer, Emmons confirmed with Selvaggio that it was accurate, and Selvaggio indicated it was supported by investigations. *Id.* ¶ 9. Emmons was satisfied with this response because in his experience, Selvaggio did “not take on initiatives without first confirming that the position or message he [was] communicating [was] a credible one.” *Id.* ¶ 6.

82. After receiving a copy of the flyer itself from Selvaggio, Emmons and Selvaggio had another discussion about it. See Dalmat Decl. Ex. 13 (Emmons Tr. 76:1-80:16); Dalmat Decl. Ex. 18 (Selvaggio Ex. 6).

**RESPONSE: Undisputed** that Selvaggio and Emmons had a second call regarding the project of distributing Flyer after Selvaggio emailed it to Emmons. **DISPUTED** to the extent the statement implies that the call occurred because Emmons questioned the truth of the Flyer’s statements. Emmons Decl. ¶ 7.

83. During that second conversation, Emmons read the flyer in its entirety but did not discuss any details of any investigations into Gonzalez or Renner and did not discuss the accusation that Guenther helped Gonzalez cover up harassment charges and paid him off in exchange for installing Hines. See Dalmat Decl. Ex. 13 (Emmons Tr. 78:25-79:15, 90:13-91:19).

**RESPONSE: Undisputed** that Emmons read the Flyer and that Emmons and Selvaggio did not discuss details of the investigations Selvaggio indicated supported the Flyer’s statements. **DISPUTED** that Emmons and Selvaggio did not discuss the Flyer’s statement concerning Gonzalez and Hines. After reading the Flyer, Emmons

1 confirmed with Selvaggio that the Flyer's statements were true. ECF No. 112 ¶ 9.  
2 Emmons does not recall whether this occurred in the first or second conversation.  
3 Emmons Decl. ¶ 7.  
4

5 84. Emmons also did not discuss with Selvaggio the accusation that  
6 Guenther helped cover up allegations Renner was facing. See Dalmat Decl. Ex. 13  
7 (Emmons Tr. 78:14-80:16).

8 **RESPONSE: DISPUTED.** Selvaggio and Emmons read through the Flyer,  
9 and Selvaggio confirmed to Emmons that the statements was true. ECF No. 113-3  
10 at 19–20 (Selvaggio Tr. 110:18-111:5); ECF No. 113-4 at 10–11 (Emmons Tr.  
11 108:23-109:10); ECF No. 112 ¶¶ 5–9. Selvaggio also stated there had been  
12 investigations. ECF No. 113-3 at 20 (Selvaggio Tr. 111:6-9); ECF No. 113-4 at 8  
13 (Emmons Tr. 78:11–13); ECF No. 112 ¶ 9. **Undisputed** that Selvaggio and Emmons  
14 did not discuss further details about Guenther helping Renner hide from sexual  
15 harassment allegations.  
16

17 85. Emmons then printed the flyers at a FedEx store. See Dalmat Decl. Ex.  
18 13 (Emmons Tr. 74:18-75:25).

19 **RESPONSE: Undisputed.**  
20

21 86. Emmons then drove from Portland, Oregon, to Spokane, Washington;  
22 bought a Gonzaga baseball cap at a Fred Meyer in Spokane (despite being a fan of  
23 University of Oregon); and on January 8, 2022, around 5:50 p.m., wore the hat and



1 a mask, while distributing flyers in six to eight stores in Spokane (whose addresses  
2 Selvaggio had supplied), placing them in areas of the store where UFCW members  
3 were likely to see them. See Dalmat Decl. Ex. 13 (Emmons Tr. 74:18-76:6, 81:1-  
4 84:22, 102:9-103:21); Dalmat Decl. Ex. 7 (Selvaggio Tr. 136:3-19); Dalmat Decl.  
5 Ex. 19 (RFP Resp No. 2 — 002111-16).

6 **RESPONSE: Undisputed** that on January 8, 2022, Emmons drove from  
7 Portland, Oregon, to Spokane, Washington; bought a Gonzaga baseball cap at a  
8 grocery store in Spokane; and wore the hat and a mask while distributing copies of  
9 the Flyer at six to eight stores in Spokane. **Undisputed** that Selvaggio provided  
10 Emmons with the addresses of the stores where Emmons placed copies of the Flyer,  
11 and that Emmons placed the copies at work locations within each store, such as the  
12 deli or the cash register. Emmons Decl. ¶¶ 9, 12. **DISPUTED** to the extent the  
13 statement implies that Emmons was attempting to conceal his identity. Emmons  
14 Decl. ¶ 10. Emmons purchased the baseball cap because he is also a Gonzaga fan  
15 and collects baseball caps. *Id.* ¶ 10. And he wore a mask because, on January 8,  
16 2022, Covid infection rates were extremely high, and he was concerned about being  
17 exposed to Covid. *Id.*

18  
19 87. Depending on the route, it is a 350-to-400-mile drive from Portland to  
20 Spokane. See <https://maps.app.goo.gl/yp8x1bU7iPJccn7k6>.

21 **RESPONSE: Undisputed.**

22  
23 88. The sun set on January 8, 2022, in Spokane at 4:17 p.m. and it was  
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1 “mostly cloudy” at 5:53 p.m. See  
 2 <https://www.wunderground.com/history/daily/us/wa/spokane/KGEG/date/2022-1->  
 3 8

4 **RESPONSE: Undisputed.**

5  
 6 89. Emmons denies wearing sunglasses while distributing the flyers but the  
 7 pictures show otherwise. See Dalmat Decl. Ex. 13 (Emmons Tr. 102:23-104:8),  
 8 Dalmat Decl. Ex. 19 (RFP Resp No. 2 — 002111-16).

9 **RESPONSE: Undisputed** that Emmons denies wearing sunglasses while  
 10 distributing the Flyer. **DISPUTED** that the pictures show Emmons wore sunglasses  
 11 while distributing the flyers. Emmons wears glasses due to astigmatism and wore  
 12 his glasses while distributing the Flyer. Emmons Decl. ¶ 11.

13  
 14 90. When Emmons handed out flyers at the Spokane stores, he did not  
 15 know whether the accusations in those flyers were true or false. See Dalmat Decl.  
 16 Ex. 13 (Emmons Tr. 88:14-17).

17 **RESPONSE: DISPUTED.** Emmons has repeatedly testified that he believed  
 18 the Flyer’s statements were true based on Selvaggio’s word. ECF No. 112 ¶¶ 5–9;  
 19 ECF No. 113-4 at 8, 10–11. Emmons had known Selvaggio for nearly a decade,  
 20 having worked for him on numerous projects over the years, and knew him to be an  
 21 honest and trustworthy person, who was “selective in the organizations and people  
 22 he [chose] to work for and only work[ed] for those with high integrity.” ECF No.

23 112 ¶ 6. After reading the Flyer, Emmons confirmed with Selvaggio that it was  
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1 accurate, and Selvaggio indicated it was supported by investigations. *Id.* ¶ 9.  
2 Emmons was satisfied with this response because in his experience, Selvaggio did  
3 “not take on initiatives without first confirming that the position or message he [was]  
4 communicating [was] a credible one.” *Id.* ¶ 6.

5  
6 91. Selvaggio, who gave Emmons instructions on the in-person literature  
7 drop campaign, did not want Emmons to be identified. See Dalmat Decl. Ex. 7  
8 (Selvaggio Tr. 144:16-145:1)

9 **RESPONSE: Undisputed** that Selvaggio gave Emmons instructions  
10 regarding how to distribute the Flyer. **DISPUTED** that Selvaggio did not want  
11 Emmons to be identified or that Selvaggio instructed Emmons to conceal his  
12 identity. The cited testimony simply states that Selvaggio did not want *himself* to  
13 be identified as responsible for the Flyer. *See* ECF No. 106 at 76 (Selvaggio Tr.  
14 144:16-145:1) (“Q. When you mailed the flyers out, was there a return address on  
15 the envelopes?” A. No, there was not. Q. Was there any identification of who was  
16 responsible for the mailing? A. No. Q. And that’s true for the flyer that Mr. Emmons  
17 distributed? A. That’s correct. Q. And that was intentional? A. Yes.”).

18  
19 92. Upon completing the distribution, Emmons confirmed to Selvaggio that  
20 he had done so and told people “here’s information about the union, information  
21 about the merger.” See Dalmat Decl. Ex. 7 (Selvaggio Tr. 118:8-18).

22 **RESPONSE: Undisputed.**

1           93. Selvaggio paid Emmons \$2,500, reimbursed by Local 555, for  
 2 circulating the flyers. See Dalmat Decl. Ex. 7 (Selvaggio Tr. 114:4-121:7, 135:25-  
 3 138:14); Dalmat Decl. Ex. 18 (Selvaggio Ex. 6); Dalmat Decl. Ex. 20 (Selvaggio  
 4 Ex. 7).

5           **RESPONSE: Undisputed.**

6  
 7           94. Local 555 indemnified both Emmons and Selvaggio for their roles in  
 8 circulating the flyers. See Dalmat Decl. Ex. 13 (Emmons Tr. 99:1-17); Dalmat Decl.  
 9 Ex. 7 (Selvaggio Tr. 128:4-129:4); Dalmat Decl. Ex. 21 (EMM 000001-9).

10           **RESPONSE: Undisputed** that UFCW 555 and Ridgelark Strategies had a  
 11 contract for services that contained an indemnification provision, under which  
 12 UFCW 555 agreed to indemnify Ridgelark for certain claims, and that UFCW 555  
 13 agreed to honor that agreement insofar as it relates to this lawsuit. *See* ECF No. 106  
 14 at 144 (EMM\_000001). **Undisputed** that Selvaggio and Ridgelark entered an  
 15 agreement with Emmons and his company Osprey, under which Selvaggio and  
 16 Ridgelark agreed to “provide Emmons a defense.” *Id.* **DISPUTED** that UFCW 555  
 17 had any agreement with Emmons prior this litigation, or that Emmons had any  
 18 knowledge of the indemnification agreement between UFCW 555 and Ridgelark  
 19 when he distributed the Flyer, as the indemnification agreement here was entered  
 20 into at the start of the case. *See* ECF No. 106 at 144 (EMM\_000001); DiLorenzo  
 21 Decl. Ex. D (Emmons Tr.) at 62:22–25 (no services from Osprey to UFCW 555 to  
 22 Emmons’s knowledge); *id.* at 68:3–17 (did not work on projects for UFCW 555).

23 Regardless, this purported fact has no relevance to the merits of Guenther’s claims  
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1 against Emmons.

2  
3 95. On July 12, 2021, a member of Local 367 sent that union a letter  
4 accusing Angel Gonzalez of sexually harassing her. See Dalmat Decl. Ex. 22 (July  
5 12, 2021 Letter).

6 **RESPONSE: Undisputed.**

7  
8 96. On July 15, 2021, Clay received a text message asking if Gonzalez was  
9 still President of Local 367. See Dalmat Decl. Ex. 23 (UFCW-EMMONS 000953).

10 **RESPONSE:** This purported fact has no relevance to the merits of  
11 Guenther's claims against Emmons.

12  
13 97. Over the month, Mike Hines negotiated a settlement on behalf of Local  
14 367 with the member, which paid her \$50,000 and caused Gonzalez to resign from  
15 Local 367. See Dalmat Decl. Ex. 24 (Hines sub resp. 09); Dalmat Decl. Ex. 27 (July  
16 29, 2021, UFCW 367's Minutes); Dalmat Decl. Ex. 25 (Hines sub resp. 010); Dalmat  
17 Decl. Ex. 26 (August 19, 2021, Confidential Settlement and Release Agreement).

18 **RESPONSE: Undisputed** that UFCW 367 paid a member \$50,000 to settle  
19 potential claims after Angel Gonzalez sexually harassed her. **DISPUTED** that the  
20 settlement "caused" Gonzalez to resign. Gonzalez resigned before UFCW 367  
21 reached a settlement agreement with the complaining member. ECF No. 106 at 165  
22 (dated July 25); ECF No. 106 at 171 (dated August 19).

23  
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1           98.    Until seeing the flyer in December 2021, Guenther knew nothing about  
2 the Local 367 member’s accusation against Gonzalez or Local 367’s settlement with  
3 that member. See Guenther Decl. ¶¶ 122-124.

4           **RESPONSE: Undisputed** based on the record, which lacks any evidence  
5 supporting or contradicting this statement.

6  
7           99.    Guenther never paid Gonzalez off for anything. See Guenther Decl. ¶  
8 124; Mizrahi Decl. ¶¶ 7-10.

9           **RESPONSE: Undisputed** based on the record, which lacks any evidence  
10 supporting or contradicting this statement. Mizrahi’s conclusory testimony and  
11 assertion that no UFCW 21 funds went to Angel Gonzalez or UFCW 367 to “cover[]  
12 up” sexual harassment charges does not show whether *Guenther* paid Gonzalez  
13 anything—whether through a favor, money, or otherwise. Guenther’s declaration  
14 similarly states she did not “make a payment” but does not mention other forms of  
15 recompense. ECF No. 107 ¶ 124.

16  
17           100. Nor did she influence Hines’s advancement at Local 367. To the  
18 contrary, Hines left Local 21 to join Local 367 without Guenther’s foreknowledge  
19 and over her objection. See Guenther Decl. ¶¶ 23-31; Mizrahi Decl. ¶¶ 11-15.

20           **RESPONSE: Undisputed** based on the record.

21  
22           101. Hines certainly is not Guenther’s “puppet.” In fact, on June 29, 2021,  
23 he joined Clay’s complaint against Guenther. See Dalmat Decl. Ex. 1 (UFCW 987).

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1       **RESPONSE: Undisputed** that Hines initially joined Clay’s complaint  
2 against Guenther. Whether Hines was Guenther’s “puppet” is an opinion, not a fact,  
3 and therefore is improper in Guenther’s Statement of Material Facts.  
4

5       102. Hines became Secretary Treasurer of Local 367 in July 2021 at  
6 Gonzalez’s recommendation. See Dalmat Decl. Ex. 28 (Minutes of UFCW 367’s  
7 Executive Board Meetings of June 16, 2021, and July 1, 2021).

8       **RESPONSE: Undisputed.**  
9

10       103. Following the member’s sexual harassment allegations, Hines offered  
11 himself at a July 29, 2021, Executive Board meeting as Gonzalez’s replacement for  
12 Local 367 president. See Dalmat Decl. Ex. 27 (July 29, 2021, UFCW 367’s  
13 Minutes).

14       **RESPONSE: DISPUTED.** The cited evidence does not support the  
15 proposition that “Hines offered himself.” It was also not produced during discovery,  
16 which is presumably why it is not Bates stamped. DiLorenzo Decl. ¶ 10. Guenther  
17 had this document in her possession, custody, control, failed to produce it, and now  
18 “is not allowed to use that information ... to supply evidence on a motion.” *See* Fed.  
19 R. Civ. P. 37(c)(1).  
20

21       104. The Local 367 Board then accepted Gonzalez’s resignation from the  
22 presidency and made Hines its acting president. See Dalmat Decl. Ex. 27 (July 29,  
23 2021, UFCW 367’s Minutes).

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1           **RESPONSE: DISPUTED.** The cited evidence does not support not notion  
2 that the board “then” did anything after the false assertion in the prior paragraph. It  
3 further does not show Hines being made acting president. It was also not produced  
4 during discovery, which is presumably why it is not Bates stamped. DiLorenzo  
5 Decl. ¶ 10. Guenther had this document in her possession, custody, control, failed  
6 to produce it, and now “is not allowed to use that information ... to supply evidence  
7 on a motion.” *See* Fed. R. Civ. P. 37(c)(1).

8  
9           105. Guenther had no role or influence in that decision at all. Guenther did  
10 not attend that meeting of the Local 367 Board and would not ordinarily do so. *See*  
11 Guenther Decl. ¶¶ 125-126; Dalmat Decl. Ex. 27 (July 29, 2021, UFCW 367’s  
12 Minutes).

13           **RESPONSE: Undisputed** that Guenther did not attend the UFCW 367  
14 Executive Board meeting described in Paragraph 104 and would not ordinarily do  
15 so. The record lacks evidence regarding whether Guenther had any influence on the  
16 Board’s decision to make Hines acting president of UFCW 367. **DISPUTED** to the  
17 extent it relies on Dalmat Decl. Ex. 27, which not produced during discovery and is  
18 presumably why it is not Bates stamped. DiLorenzo Decl. ¶ 10. Guenther had this  
19 document in her possession, custody, control, failed to produce it, and now “is not  
20 allowed to use that information ... to supply evidence on a motion.” *See* Fed. R.  
21 Civ. P. 37(c)(1).

22  
23           106. By publishing the defamatory leaflet, Emmons dramatically harmed  
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1 Guenther, including through protracted internal complaints within UFCW that  
 2 undermined her standing among UFCW leaders, complicated her career, and caused  
 3 her incredible anxiety. See Guenther Decl. ¶¶ 128-167.

4 **RESPONSE: DISPUTED** that Emmons dramatically harmed Guenther by  
 5 distributing the Flyer. The only evidence Guenther cites is her own self-serving  
 6 declaration, and nothing in it supports this statement. The “protracted internal  
 7 complaints within UFCW” came from Dan Clay, the person behind the Flyer, so  
 8 they could not have been caused by the Flyer. See ECF No. 107 ¶¶ 141-43, 146-53,  
 9 155-57. The other supposed evidence described in the cited paragraphs—a  
 10 Facebook post by UFCW 367 member Jessica Roach, a complaint from UFCW 21  
 11 member Vanessa Giles, and an email from Collin Farthingworth—also do not show  
 12 the Flyer caused “dramatic[] harm[.]” The Facebook post appears to place blame on  
 13 Gonzalez and Renner—not Guenther. See ECF No. 106 at 88. Giles disapproved  
 14 of Guenther based on Guenther’s own social media posts. See DiLorenzo Decl.  
 15 Ex. H. And the Farthingworth email includes more detail than the Flyer, indicating  
 16 it was not caused by the Flyer but by the concerns that motivated the Flyer. See ECF  
 17 No. 106 at 90. In any event, Guenther claims Clay sent the Farthingworth email, in  
 18 which case it could not have been caused by the Flyer. See *supra* ¶ 68.

19  
 20 107. The leaflet led to a shooting at her office window, a break-in of the safe  
 21 in her office, and continued tarnishing of her reputation at the International. See  
 22 Guenther Decl. ¶ 162.

23 **RESPONSE: DISPUTED.** Guenther has no evidence that the Flyer “led to”  
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1 any of these events. The cited paragraph of her declaration simply states that these  
 2 events occurred and that she had not experienced “anything like this before.” ECF  
 3 No. 107 ¶ 162; *see also* DiLorenzo Decl. Ex. B (Guenther II Tr.) at 23:25–24:15  
 4 (admitting no evidence of connection between Emmons and shooting or break-in).  
 5 But the only date she provides for these events is September 2023—more than a year  
 6 and a half after Emmons distributed the Flyer—which significantly undermines any  
 7 casual inference. *Id.* Guenther does not even offer evidence that the shooting or  
 8 break-in were targeted at her personally, much less caused by the Flyer. And the  
 9 purported “tarnishing of her reputation” would more likely be a result of Dan Clay’s  
 10 communications to UFCW staff, independent of the copies of the Flyer Emmons  
 11 distributed. *See id.* (stating “Mr. Clay called me a ‘menace’ and other invectives in  
 12 an email that went to all 111 UFCW staff”); ECF No. 107 ¶ 141-43, 146-53, 155-  
 13 57. To the extent this testimony could support Guenther’s damages arguments, the  
 14 Court should exclude it under Rule 37(c)(1) because Guenther failed to allege it in  
 15 her Complaint and failed to disclose it under Rule 26(a). *See* ECF No. 1-2;  
 16 DiLorenzo Decl. ¶ 11; *Okeke v. N.Y. & Presbyterian Hosp.*, 2017 WL 2484200, at  
 17 \*3 (S.D.N.Y. June 6, 2017) (“A plaintiff’s failure to disclose a computation of  
 18 damages in her initial disclosure is alone sufficient to preclude her from submitting  
 19 evidence of it at trial”) (quoting *Roberts v. Ground Handling, Inc.*, 2007 WL  
 20 2753862, at \*4 (S.D.N.Y. Sept. 20, 2007)).

21  
 22 108. Anxiety from the fallout of the flyer caused her to miss a month of  
 23 work, move personal residences at significant cost, beef up office security, travel

1 only with companions, and incur expenses for professional care. See Guenther Decl.  
2 ¶ 164.

3 **RESPONSE: Undisputed** that Guenther experienced anxiety. **DISPUTED**  
4 that the Flyer caused her anxiety. Guenther states her anxiety was “from the fallout  
5 of the flyer,” and that phrase appears to refer to the events described in Paragraph  
6 107. As stated in response to Paragraph 107, Guenther has no evidence that the Flyer  
7 caused any of those events. Moreover, the Court should exclude any testimony or  
8 other evidence of Guenther “miss[ing] a month of work, mov[ing] personal  
9 residences at significant cost, beef[ing] up office security, travel[ing] only with  
10 companions, and incur[ring] expenses for professional care” because she failed to  
11 allege any of these purported harms in her Complaint and failed to disclose them  
12 under Rule 26(a). *See* ECF No. 1-2; ECF No. 114 at 4–5; DiLorenzo Decl. ¶ 11;  
13 *Okeke*, 2017 WL 2484200, at \*3.

14  
15 109. The leaflet contributed to Guenther not receiving an appointment as an  
16 International Vice President, even though, as the president of the largest UFCW local  
17 union in America, she otherwise would have received that appointment. That  
18 appointment would have carried with it a \$20,000 annual stipend and the prestige of  
19 the office. See Guenther Decl. ¶ 164; Mizrahi Decl. ¶¶ 40-42; Crosby Decl. ¶¶ 15-  
20 23.

21 **RESPONSE: DISPUTED.** Guenther has no evidence that the Flyer  
22 “contributed to” her not receiving an appointment as a UFCW International Vice  
23 President, or that she “would have received that appointment” but for the Flyer.

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1 Guenther claims in her declaration that she “believe[s]” UFCW International  
2 President Marc Perrone “wanted to disassociate himself” from Guenther “because  
3 of the reputational harm the flyers caused.” ECF No. 107 ¶ 167. But Guenther  
4 testified that she already had a strained relationship with Perrone before the proposed  
5 merger. *See* DiLorenzo Decl. Ex. B (Guenther II Tr.) at 13:3–10, 19:24–18. The  
6 record is also replete with alternative explanations for Guenther not receiving a Vice  
7 President appointment. *See id.* at 36:20–25, 80:15–23, 85:14–20 (Guenther had a  
8 strained relationship with her UFCW International regional director, Kate Meckler);  
9 DiLorenzo Decl. Ex. A (Guenther I Tr.) at 233:4–6, 237:4–20 (Guenther accused  
10 other UFCW chapter presidents of taking exorbitant salaries and accused Perrone of  
11 having ties to the mob); *id.* at 78:7–8, 80:15–23, 85:14–20 (Guenther had a strained  
12 relationship with other UFCW International Vice Presidents, such as Dan Clay).

1 **Defendant Emmons further submits the following statements of disputed**  
 2 **fact in support of its Opposition to Plaintiff’s Motion for Summary Judgment:**

3  
 4 **I. Complaint Letter Against Renner & Resulting Settlement Agreements**

5 110. On September 13, 2021, a letter of concern regarding the UFCW 1439  
 6 President, Eric Renner, was emailed to UFCW 1439 Executive Board Members and  
 7 UFCW International Leadership. ECF No. 113 ¶ 24; ECF No. 113-23 (“Complaint  
 8 Letter”); ECF No. 113-6 at 3-5 (Jackson Tr. 25:13–26:8, 99:13–16).

9 111. The five-page Complaint Letter raised concerns about what it described  
 10 as Renner’s “abuse of power” and provided examples of such abuses, including  
 11 instances where the letter stated Renner “commented repeatedly about female staff  
 12 members and International Union officers ‘big butts,’” “encouraged male employees  
 13 to imagine a specific female employee engaged in sex acts,” “bragged ... about  
 14 having [sexual] relationships with members,” asked a male employee whether he  
 15 had “hit that yet” in reference to a female employee, and used “homophobic  
 16 language” to “mock[] [an employee’s] mannerisms.” ECF No. 113 ¶ 24 & 113-23  
 17 at 4–8; ECF No. 113-6 at 3-4 (Jackson Tr. 25:13–26:8); ECF No. 113-5 at 3 (Fish  
 18 Tr. 24:7–22); *see also* ECF No. 51-4 (Jackson Tr.) at 54:11–55:14 (behavior  
 19 described in Complaint Letter constituted “sexual harassment”).

20 112. The Complaint Letter was signed by seven individuals, who were then-  
 21 current and former employees of UFCW 1439: Adam Jackson (Organizing  
 22 Director), Laurel Fish (Organizer & Director of Strategic Campaigns), Katie Dugger  
 23 (Membership Services/Organizer), Sandra Huggins (former Benefits Director),

1 Leslie Cowin (former Membership Services/Administrative Assistant), Amy Poston  
 2 (former Office Assistant/Administrative Assistant), and Austin DePaolo (former  
 3 Organizer & Business Representative) (collectively “Complainants”). ECF No. 113  
 4 ¶ 24; ECF No. 113-23 at 8; ECF No. 113-6 at 3-4 (Jackson Tr. 25:13–26:8).

5 113. Between approximately September 22, 2021, and early October 2021,  
 6 Plaintiff’s counsel Aaron Streepy investigated the Complaint Letter’s claims and  
 7 drafted settlement agreements with nondisclosure provisions, which the  
 8 Complainants, Renner, UFCW 1439, and others signed. *See* ECF No. 51-2 at  
 9 006047 (September 15, 2021, email from Streepy stating he “anticipate[d]  
 10 beginning” meeting with Complainants the following Wednesday); ECF No. 51-3 at  
 11 006226 (October 4, 2021 email from Streepy with settlement agreements); ECF  
 12 No. 51-1 (“NDAs”).

13 114. The NDAs include the following provisions: “Renner shall resign his  
 14 position with UFCW 1439 effective April 1, 2022,” and “Renner agrees not to run  
 15 for UFCW 1439 office in the future.” *See, e.g.*, ECF No. 51-1 at 006001. The NDAs  
 16 also prohibit the Complainants from disclosing the terms of the settlement agreement  
 17 or information and evidence related to the complaints. *See, e.g., id.* at 006002.

18 115. Before September 2021, Renner had been opposed to merging with  
 19 UFCW 21 for political and other reasons. DiLorenzo Decl. Ex. F (Jackson Tr.) at  
 20 91:8–95:10; *id.* at Ex. G (Garcia Tr.) at 81:10–18.

## 21 **II. Guenther’s Efforts to Bring About the Merger**

22 116. In October 2021, Guenther and Renner communicated regularly  
 23 regarding the merger, including by text message and by phone. ECF No. 113 ¶ 13;

1 ECF No. 113-12 at 29–33; ECF No. 113-2 at 3-9 (Guenther II Tr. 30:16–31:16,  
2 34:18–38:24).

3 117. On October 20, 2021, Renner sent Guenther a text message about  
4 reaching out to Kate Meckler. ECF No. 113 ¶ 13; ECF No. 113-12 at 31; ECF  
5 No. 113-2 at 3-4, 7 (Guenther II Tr. 30:16–31:7, 36:3–11).

6 118. Kate Meckler was a UFCW regional director. ECF No. 113-1 at 46, 50  
7 (Guenther I Tr. 124:23–25, 158:13–14); ECF No. 113-2 at 7 (Guenther II Tr. 36:3–  
8 11).

9 119. Meckler needed to “release” the merger request before UFCW  
10 International would approve formal merger discussions, and Guenther was  
11 concerned that Meckler would oppose the merger. ECF No. 113-1 at 52-32  
12 (Guenther I Tr. 161:24–162:9); ECF No. 113-2 at 7 (Guenther II Tr. 36:20–25).

13 120. On October 20, 2021, Guenther responded to Renner, stating in part:

14 I think we should meet with Aaron first and then maybe call her that  
15 day? That way we have all our best arguments written down and vetted

16 Kate may try to mess with things...hopefully not...so maybe we can  
17 ask Aaron to draft up top 10 reasons or something. And then  
specifically ask for her support.

18 And we should have a letter ready to go asap after we talk with her to  
full exec committee.

19 ECF No. 113 ¶ 13; ECF No. 113-12 at 30–31; ECF No. 113-2 at 3-4, 7 (Guenther II  
20 Tr. 30:16–31:7, 36:3–25).



1 121. Guenther also asked Shaun Barclay, UFCW 21's former regional  
2 director, to speak with Perrone about the benefits of the merger. ECF No. 113-1 at  
3 54 (Guenther I Tr. 163:3–24).

4 122. Guenther helped prepare a merger agreement, which Guenther and  
5 Renner signed. ECF No. 113-1 at 32-33 (Guenther I Tr. 69:19–70:19); ECF  
6 No. 113-9.

7 123. Aaron Streepy represented both parties to the merger. ECF No. 55 at  
8 3:18–20; ECF No. 113-1 at 29-31 (Guenther I Tr. 65:6–67:13).

9 124. Under the merger agreement, Guenther would be president of the new  
10 union formed through the merger. ECF No. 113-9. Under a “side agreement,”  
11 Renner would be an employee of the new union. ECF No. 113 ¶ 14; ECF No. 113-  
12 13 at 2; ECF No. 113-1 at 37 (Guenther I Tr. 84:7–25); ECF No. 113-2 at 10-12  
13 (Guenther II Tr. 43:2–25, 49:20–50:4).

14 125. Before Guenther recommended the proposed merger to UFCW 21's  
15 Executive Board, Guenther and Renner agreed that the new union would employ  
16 Renner. ECF No. 113-1 at 37 (Guenther I Tr. 84:7–25).

17 126. On December 8, 2021, Renner stated in a text message to Guenther:  
18 “Scott H. has reviewed merger agreement. Larry Hall supports the merger and will  
19 put his name to it. Train is rolling!!!!” ECF No. 113 ¶ 13; ECF No. 113-12 at 26;  
20 ECF No. 113-2 at 3-4 (Guenther II Tr. 30:16–31:7). Guenther responded: “Yes!!!!  
21 That is so awesome!” ECF No. 113-12 at 26.

22 127. On December 12, 2021, Renner told Guenther that two individuals  
23 “were both very impressed by [her] and are in full support!” ECF No. 113 ¶ 13;

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1 ECF No. 113-12 at 23; ECF No. 113-2 at 3-4 (Guenther II Tr. 30:16–31:7).  
2 Guenther responded: “That is great news! Now I have to get my board all in order!”  
3 ECF No. 113-12 at 23.

4 128. On December 14, 2021, Guenther led a discussion with the UFCW 21  
5 Executive Board, in which she advocated in favor of the merger. ECF No. 113-1 at  
6 25-27 (Guenther I Tr. 60:24–62:12); ECF No. 113-17 at 3–4.

7 129. When Guenther spoke with the UFCW 21 Executive Board on  
8 December 14, 2021, she knew “there had been an internal dispute [at UFCW 1439]”  
9 involving Renner that “had been resolved amongst all parties with nondisclosure and  
10 ... confidentiality agreements,” and that Renner was prohibited from “directly  
11 supervis[ing] any employees.” ECF No. 113-1 at 34, 38-39, 41, 55-56 (Guenther I  
12 Tr. 71:13–18, 93:12–94:20, 99:5–14, 167:21–168:9); ECF No. 113 ¶ 14; ECF  
13 No. 113-13 at 2; ECF No. 113-2 at 11-12 (Guenther II Tr. 49:20–50:4); ECF  
14 No. 113-17 at 3–4.

15 130. Guenther did not tell the UFCW 21 Executive Board about the claims  
16 against Renner, the nondisclosure agreements, Renner’s agreement to resign, or that  
17 Renner was not allowed to supervise people. ECF No. 113-1 at 36-37 (Guenther I  
18 Tr. 83:6–84:6).

19 131. On December 17, 2021, UFCW 1439 formally announced the merger  
20 vote to its members. ECF No. 113-24 at 2.

21 132. On January 5, 2022, the day before UFCW 1439 members began  
22 voting, Guenther stated in an email to Renner and others that her staff “are going to  
23 fly to Spokane tomorrow and provide any support needed to 1439,” “onboard [a

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1 UFCW 21 staff member] to help from tomorrow until January 20 to ensure we have  
2 what we need for all votes,” and “can also help ... with anything ... including ...  
3 vote support.” ECF No. 113-18 at 2.

4 133. In the same January 5, 2022, email, Guenther stated: “Joe and I are  
5 cancelling all of our travel and meetings and will provide extra support, Shari Davis  
6 will likely travel with us to any vote meetings we can make. ... Eric I will call you  
7 so we can outline which votes Shari/Joe and I can provide extra sets of hands. It’s  
8 game time!” ECF No. 113-18 at 2.

9 134. Also on January 5, 2022, Guenther texted Renner: “Game time!!! Its  
10 [sic] on Eric! I can t [sic] wait to celebrate on Jan 20!!!!!!!!!!” ECF No. 113 ¶ 13; &  
11 ECF No. 113-12 at 18; ECF No. 113-2 at 3-4 (Guenther II Tr. 30:16–31:7).

### 12 **III. The Flyer**

13 135. In December 2021, nonparty Michael Selvaggio, who through his  
14 company Ridgelark Strategies LLC was political director for UFCW 555, created  
15 the Flyer to encourage UFCW members to vote against the proposed merger. ECF  
16 No. 113-3 at 4, 6, 21 (Selvaggio Tr. 62:2–23, 75:14–19, 113:10–18). The Flyer  
17 stated:

18 ATTENTION UFCW MEMBERS

19 The in-union “Sexual Harassment club” is at it again!!

20 First Faye Gunther [sic] (President of Local 21) helped former 367  
21 President Angel Gonzalez cover up his harassment charges and paid  
22 him off in exchange for installing her puppet, Mike Hines.

1 Now she's helping Eric Renner (the Local 1439 President) hide from  
2 sexual harassment charges and land a cushy new gig with Local 21  
through a forced merger.

3 OUR UNION SHOULD BE LOOKING OUT FOR US NOT  
4 PROTECTING HARASSERS!

5 It's time to STOP THE COVERUPS!

6 VOTE NO ON ANY MERGER!

7 ECF No. 26-1.

8 136. Selvaggio created the Flyer at the request of Dan Clay, President of  
9 UFCW 555. ECF No. 113-3 at 3, 7-12, 24-25 (Selvaggio Tr. 43:23-25, 92:10-  
10 97:24, 123:20-124:2).

11 137. Clay and Esai Alday, who also works for UFCW 555, provided  
12 Selvaggio with the information that Selvaggio included in the Flyer. ECF No. 113-  
13 3 at 14, 23-25 (Selvaggio Tr. 99:11-17, 122:10-124:2).

14 138. Emmons had no involvement in creating the Flyer or in any social  
15 media posts about it. *See* ECF No. 112 ¶ 6; ECF No. 106 ¶ 131 (UFCW 367 member  
16 posted the Flyer in a closed members-only Facebook group).

17 139. Selvaggio did not tell Emmons that he had created the Flyer at Clay's  
18 request. DiLorenzo Decl. Ex. D (Emmons Tr.) at 73:18-74:10; Emmons Decl. ¶ 8.

19 140. Even if Emmons assumed that the project was for UFCW 555, Emmons  
20 had never heard of Guenther, much less Clay's relationship with or opinion of her.  
21 DiLorenzo Decl. Ex. D (Emmons Tr.) at 67:4-5; ECF No. 112 ¶ 9; *see also* Emmons  
22 Decl. ¶ 8.

23  
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1 141. On December 13, 2021, Selvaggio mailed 1,000 copies of the Flyer to  
 2 UFCW work sites across Washington. ECF No. 113-3 at 12-13, 15-18, 21-22  
 3 (Selvaggio Tr. 97:11–98:10, 101:4–102:12, 104:17–105:3, 113:22–114:1).

4 142. Guenther first learned of the Flyer on December 15 or 16, 2021. ECF  
 5 No. 113-1 at 40 (Guenther I Tr. 97:8–16). Around the same time, a grocery store  
 6 meat manager sent an image of the Flyer to Adam Jackson, and Jackson shared it  
 7 with Laurel Fish. ECF No. 113-6 at 6 (Jackson Tr. 122:6–18); ECF No. 113-5 at 6  
 8 (Fish Tr. 112:14–25). Other UFCW members Jackson spoke with had received the  
 9 Flyer too. ECF No. 113-6 at 6 (Jackson Tr. 122:16–18).

10 143. Also in mid-December 2021, a UFCW 367 member posted the Flyer in  
 11 a UFCW member Facebook forum, and other members commented on it. ECF  
 12 No. 1-2 ¶ 3.12; ECF No. 113-20 at 2; ECF No. 113-1 at 41-43 (Guenther I Tr. 99:15–  
 13 101:22).

14 144. Emmons and his company, Osprey Field Services LLC (“Osprey”),<sup>3</sup>  
 15 provide community outreach services, which has included distributing clients’  
 16 informational materials for various campaigns. ECF No. 112 ¶¶ 1–2; ECF No. 113-  
 17 4 at 3-4 (Emmons Tr. 50:20–51:20).

18 145. In January 2022, Selvaggio called Emmons and said Ridgelark wanted  
 19 to hire Emmons’s company, Osprey, to distribute copies of the Flyer to grocery  
 20 stores in Spokane. ECF No. 113-3 at 5 (Selvaggio Tr. 73:14–17); ECF No. 113-4 at  
 21 5-7, 9 (Emmons Tr. 67:13–68:25, 73:8–12, 84:12–13); ECF No. 112 ¶¶ 4, 7, 10.

22 \_\_\_\_\_  
 23 <sup>3</sup> The Complaint incorrectly names “Osprey Field Consulting LLC.”

1 146. Emmons and Osprey had been hired by Selvaggio and Ridgelark to  
2 assist with numerous community outreach projects before. ECF No. 112 ¶ 5.

3 147. Emmons first worked with Selvaggio at an organization called Direct  
4 Action Partners, where Selvaggio was President and Emmons was a Project  
5 Manager, before the organization dissolved. *Id.*

6 148. Since working together at Direct Action Partners, Selvaggio, through  
7 Ridgelark, has hired Emmons, through Osprey, for numerous other community  
8 outreach projects over the years. *Id.*

9 149. Emmons has known Selvaggio for nearly a decade. *Id.*

10 150. In Emmons's experience working for Selvaggio, Emmons has observed  
11 Selvaggio to be honest and trustworthy. ECF No. 113-4 at 11 (Emmons Tr. 109:1–  
12 10); ECF No. 112 ¶ 6.

13 151. Specifically, in Emmons's experience, Selvaggio is selective in the  
14 organizations and people he chooses to work for, only works for those with high  
15 integrity, and does not take on initiatives without first confirming that the position  
16 or message he is communicating is a credible one. ECF No. 112 ¶ 6.

17 152. Emmons agreed to take on the project of distributing copies of the Flyer  
18 in Spokane. ECF No. 112 ¶ 7.

19 153. Selvaggio emailed Emmons the Flyer on January 5, 2022. ECF  
20 No. 112 ¶ 8.

21 154. Selvaggio provided Emmons with a list of grocery stores where  
22 Selvaggio wanted Emmons to distribute the Flyer. *Id.*

1 155. Emmons does not personally know the individuals named in the Flyer.  
2 ECF No. 112 ¶ 9. Selvaggio did not tell Emmons whom the project was for or that  
3 Dan Clay was involved. Emmons Decl. ¶ 8.

4 156. Emmons had no personal knowledge as to the truth of the statements in  
5 the Flyer. ECF No. 112 ¶ 9; ECF No. 113-4 at 10-11 (Emmons Tr. 108:23–109:10);  
6 ECF No. 113-3 at 19 (Selvaggio Tr. 110:18–23).

7 157. Emmons asked Selvaggio whether the Flyer's statements were  
8 accurate. ECF No. 112 ¶ 9; ECF No. 113-3 at 19-20 (Selvaggio Tr. 110:18–111:2).

9 158. Selvaggio confirmed to Emmons that the Flyer's statements were  
10 credible and stated that there had been investigations. ECF No. 112 ¶ 9; ECF  
11 No. 113-4 at 8, 10-11 (Emmons Tr. 78:11–21, 108:23–109:10); ECF No. 113-3 at  
12 19-20 (Selvaggio Tr. 110:18–111:9).

13 159. On January 8, 2022, Emmons placed copies of the Flyer at five to seven  
14 grocery stores in Spokane, leaving six to eight copies at each store. ECF No. 112  
15 ¶ 10; ECF No. 113-4 at 9 (Emmons Tr. 84:12–13).

16 160. After speaking with Selvaggio and at the time Emmons distributed the  
17 Flyer, Emmons believed that the Flyer's statements were true. His belief was based  
18 on his experience with Selvaggio and Selvaggio's representations concerning the  
19 Flyer. ECF No. 112 ¶ 9; ECF No. 113-4 at 10-11 (Emmons Tr. 108:23–109:10);  
20 Emmons Decl. ¶ 7.

21 161. Between January 6 and 20, 2022, during the time Emmons distributed  
22 the Flyer, UFCW 1439 members voted on the proposed merger. ECF No. 113-24 at  
23 2; ECF No. 113-1 at 40 (Guenther I Tr. 97:19–25).

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1 **IV. Guenther's Role as UFCW 21 & UFCW 3000 President**

2 162. While UFCW 21 President, Guenther regularly spoke at press  
3 conferences, gave interviews, and appeared in the media. ECF No. 113-10 at 6–7;  
4 ECF No. 113-1 at 13-16 (Guenther I Tr. 41:18–42:16, 45:7–46:1).

5 163. The topics Guenther spoke about at these press conferences and in the  
6 media included Covid masking and vaccines, Black Lives Matter, and workforce  
7 development, among others. ECF No. 113-10 at 5–7 (Resp. to Interrog. 6); ECF  
8 No. 113-1 at 13-16 (Guenther I Tr. 41:18–42:16, 45:7–46:1).

9 164. One of the UFCW 21 staff members Guenther supervised was  
10 responsible for UFCW 21's communications, and that person's duty was in part "to  
11 invite as many press people as they could" to UFCW 21 press conferences at which  
12 Guenther spoke. ECF No. 113-1 at 9, 12-14 (Guenther I Tr. 37:12–21, 40:11–  
13 42:13).

14 165. Guenther has spoken at press conferences, given interviews, and  
15 appeared in the media at least seventeen times since January 1, 2019. ECF No. 113-  
16 10 at 5–7 (Resp. to Interrog. 6).

17 166. As UFCW 21 President, Guenther communicated with members of  
18 UFCW 21 "through Twitter, Instagram, e-mail, telephone, text message, podcast,  
19 U.S. mail, Facebook, Facebook Messenger[,], and in-person." ECF No. 113-10 at 4  
20 (Resp. to Interrog. 2); ECF No. 113-1 at 6-8 (Guenther I Tr. 26:21–28:1).

21 167. Guenther could send emails to all UFCW 21 members and transmitted  
22 annual notices on her letterhead. ECF No. 113-1 at 6-8 (Guenther I Tr. 26:21–28:1).

1 168. UFCW 21 sponsored vaccine clinics, and Guenther communicated  
2 about these clinics to her roughly 44,000 members. ECF No. 113-1 at 9-10  
3 (Guenther I Tr. 37:22–38:9).

4 169. As UFCW 21 President, Guenther met with Governor Jay Inslee to  
5 discuss Covid mask policies to keep the “lines of communications open.” ECF  
6 No. 113-1 at 11, 17-18 (Guenther I Tr. 39:3–18, 47:24–48:12).

7 170. As UFCW 21 President, Guenther communicated with other union  
8 leaders, including negotiating a memorandum of understanding regarding “sick  
9 leave protections” and getting other union chapters to sign on. ECF No. 113-1 at  
10 16-17 (Guenther I Tr. 46:20–47:23).

11 171. Guenther “intentionally did not engage in public discussion of the flyer  
12 mailed on December 13” because she “felt that engaging in the substance” would  
13 “only fan its false flames.” ECF No. 107 ¶ 129.

14 172. Guenther was re-elected as UFCW 3000 President in 2023. ECF  
15 No. 113-1 at 8 (Guenther I Tr. 28:2–8).

16 173. Guenther ran for a position at UFCW International in 2023. ECF  
17 No. 113-1 at 19-21 (Guenther I Tr. 49:25–50:20, 52:17–21).

18 174. Guenther had strained relationship with Perrone, Meckler, and Clay and  
19 accused other local presidents of being affiliated with the mob. DiLorenzo Decl.  
20 Ex. B (Guenther II Tr.) at 13:3–10, 19:20–18, 78:7–8, 80:15–23, 85:14–20; *Id.* Ex.  
21 A (Guenther I Tr.) at 233:4–6, 237:4–20; ECF No. 113-2 at 7 (Guenther II Tr. 36:20–  
22 25).



1 175. Guenther continues to make media appearances. ECF No. 113-1 at 47-  
2 48 (Guenther I Tr. 126:18–127:1).

3 **V. Lawsuit**

4 176. On July 29, 2023, Guenther stated in an email to UFCW International  
5 President Marc Perrone:

6 You urged caution in proceeding down the litigation path. I heard you,  
7 and possibly to my detriment, have declined to broaden the scope of  
8 litigation to include Local 555, Dan Clay, Michael Selvaggio ....

9 ECF No. 113-22 at 5–6; ECF No. 113-2 at 13-15 (Guenther II Tr. at 88:20–89:8,  
10 89:24–90:14).

11 177. Guenther testified that she also did not sue Dan Clay and UFCW 555  
12 because “the [UFCW] constitution requires that you have to go through an internal  
13 process when .... there’s conflict that’s member to member before litigation” and “I  
14 didn’t have enough.” ECF No. 113-1 at 57 (Guenther I Tr. 204:12–20).  
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23

1 DATED this 25th day of October, 2024.

2  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2024, I caused the document to which this certificate is attached to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury that the foregoing is true and accurate.

DATED this 25th day of October, 2024.

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